IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	Civil No. 91-578-JLF
Plaintiff,	MINUTES OF COURT
vs.	**DATE: March 18, 2003**
NL INDUSTRIES, ET. AL.,	**PLACE: Benton, Illinois**
Defendants.	**TIME: 11:40 AM - 12:15 PM**

FILED
MAR 18 2003
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
BENTON OFFICE

PRESENT: The Honorable James L. Foreman, District Judge

DEPUTY CLERK: **Vicki McGuire**

COURT REPORTER: **None Appearing**

COUNSEL FOR PLAINTIFF: **Steven J. Willey**

COUNSEL FOR DEFENDANTS: **Kathleen M. Whitby (Lucent Technologies), Dennis Reis (Johnson Controls), David Simon (Allied-Signal)**

MINUTES OF TELEPHONE STATUS CONFERENCE:

The Court conducts a conference call with the parties as noted above. The Court informs the parties that it is going to enter a Memorandum and Order allowing entry of the proposed *Consent Decree between the United States of America, Johnson Controls, Inc.*, Lucent Technologies, Inc., Exide Corporation, Allied Signal, Inc., GNB Technology and General Battery Corporation.

The plaintiff reports that there are three remaining non-settling defendants: NL Industries, Inc., Ace Scrap Metals and St. Louis Lead Recycling.

The defendants agree to prepare a proposed case management order and to submit it to the United States of America by **March 25, 2003.** The Government shall respond to the proposed case management order by **April 8, 2003.** The agreed upon proposed case management order shall then be submitted to the Court for review on or before **April 22, 2003.**

NORBERT G. JAWORSKI, CLERK

By: Vicki McGuire
Vicki McGuire, Deputy Clerk

EPA Region 5 Records Ctr.
258653

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
NL INDUSTRIES, INC., et al.,	)	
	)	CASE N0. 91-CV-578-JLF
Defendants,	)	
	)	
and	)	
	)	
CITY OF GRANITE CITY, ILLINOIS, LAFAYETTE H. HOCHULI, and DANIEL M. McDOWELL,	)	
	)	
Intervenor-Defendants.	)	

MEMORANDUM AND ORDER

FOREMAN, District Judge:

Before the Court is plaintiff's Motion for Entry of the Proposed Consent Decree between the United States and Johnson Controls, Inc., Lucent Technologies, Inc., Exide Corporation, AlliedSignal, Inc., GNB Technology, and General Battery Corporation, (i.e., the "Settling Defendants") (Doc. 260). The settling defendants join in the government's motion, and request that the Court enter the Consent Decree. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (CERCLA), 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331, 1345, and 1355.[1]

[1]The Court notes that on July 1, 2002, Exide Corporation filed a suggestion of bankruptcy. Despite Exide's bankruptcy filing, the Court finds that it may proceed with this action. As an initial matter, the Court finds that it has jurisdiction to determine whether this action is

I. Factual Background.

The NL Industries/Taracorp Superfund Site, (the "Site"), occupies roughly 16 acres in Granite City, Illinois, that were previously the location of a battery recycling facility and secondary lead smelter from 1903 to 1983. Also included in the site are approximately 55 square blocks of residential property surrounding the smelter, as well as certain fill locations in Granite City, Madison, and Venice, Illinois. The smelter was owned by NL Industries ("NL") from 1928 until August of 1979, when NL sold the plant to Taracorp Industries, Inc. Battery recycling operations began at the site in the 1950's.

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stayed. *See NLRB v. P*I*E* Nationwide, Inc.*, 923 F.2d 506, 512 (7th Cir. 1991) ("the applicability of the automatic stay provision is a question of law within the competence of the judiciary").

Section 362(b)(4) of the Bankruptcy Code provides that bankruptcy petitions do not operate as a stay of:

> . . . the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's . . . police or regulatory power . . .

11 U.S.C. § 362(b)(4).

Although not yet addressed by the United States Court of Appeals for the Seventh Circuit, all other circuits considering the question have held that CERCLA cost recovery actions fall within the exemption from the automatic stay provision in 11 U.S.C. § 362(b)(4). *See City of New York v. Exxon Corp., 932 F.2d 1020 (2d Cir. 1991); United States v. Nicolet, Inc., 857 F.2d 202 (3rd Cir. 1988); Matter of Commonwealth Oil Ref. Co., 805 F.2d 1175 (5th Cir. 1986). See also United States v. Acme Solvents Reclaiming, Inc.*, 154 B.R. 72 (N.D.Ill. 1993) (automatic stay does not apply to CERCLA action regardless of whether proceeding seeks monetary or injunctive relief). Accordingly, this Court finds that it may proceed with this action.

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As a result of the smelting and battery recycling operations, there is an estimated 250,000-ton waste pile of material on the site containing antimony, arsenic, barium, cadmium, chromium, lead, mercury, nickel, and zinc (the "Taracorp Pile").

The public, which had free access to the Taracorp pile, used waste material in the surrounding community as fill material in alleys and driveways. In addition, the smelting operations resulted in the emission of lead and other hazardous substances into the air, which were deposited in the surrounding community.

II. Procedural Background.

In June 1986, the site was placed on the National Priorities List pursuant to 42 U.S.C. § 9605, 51 Fed. Reg. 21054 (June 10, 1986). Between 1985 and 1990, NL Industries performed a Remedial Investigation and Feasibility Study at the site. On January 10, 1990, the United States Environmental Protection Agency ("EPA") issued a proposed clean-up plan and invited public comment. The EPA issued its Record of Decision ("ROD") on March 30, 1990, which set forth its plan for remedial action at the site. On November 27, 1990, the EPA issued a unilateral administrative order (UAO) requiring various parties to commence clean-up operations at the site. (Doc. 1, Attach. 1). None of the defendants complied with the UAO.[2]

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[2]The proposed remedial actions at the site include:

> 1) Excavation of residential areas at the site where soils and battery case materials contain lead concentrations in excess of 500 parts per million ("ppm"). The excavated material would either be consolidated with the Taracorp pile or disposed of off

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On July 31, 1991, plaintiff filed suit, seeking both civil penalties and cost recovery under CERCLA Section 107(a), against NL Industries and the following nine hazardous waste generators for their failure to comply with the UAO: Johnson Controls, Inc., AT&T, (now Lucent Technologies, Inc.), Exide Corporation, Allied Signal, Inc., (now Allied Signal, Inc.), Gould, Inc., (now GNB Technology), General Battery Corporation, Southern Scrap Metal Processor, Inc., Ace Scrap Metal Processors, Inc., and St. Louis Lead Recyclers. Plaintiff and Southern Scrap Metal Processor, Inc. reached an agreement, and this Court entered their Consent Decree on October 16, 1995. The proposed Consent Decree would resolve plaintiff's claims against all other defendants except Ace Scrap Metal Processors, Inc., St. Louis Lead Recyclers, and NL Industries.

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site.

2) Excavation of all unpaved, non-residential areas at the site where lead concentrations exceed 1000 ppm.

3) Consolidation of the separate waste piles with the Taracorp pile.

4) Construction of a cap over the Taracorp pile and a clay liner under the material added to the Taracorp pile.

5) Development of contingency plans for possible air and groundwater contamination.

6) Removal of all drums at the site.

7) Installation of groundwater monitoring wells; monitoring of air and groundwater and; inspection and maintenance of the cap on the Taracorp pile.

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Recently, plaintiff reached a final agreement with NL Industries and has lodged a consent decree with the Court (Doc. 287). Plaintiff is still attempting to resolve its claims against Ace Scrap Metal Processors, Inc. and St. Louis Lead Recyclers.

Under a case management order approved by this Court, the initial phase of the litigation focused on the defendants' challenge to the EPA remedy. Granite City, Illinois, intervened in the action, and filed a motion to restrain the EPA from implementing the remedy on the ground that the administrative record did not justify the cleanup of residential yards below 1,000 ppm. The remedy was remanded to the EPA and the administrative record was supplemented on the issue of the appropriate cleanup standard. The EPA then required excavation of soils containing at least 500 ppm for lead in residential soils at the Site.

In the Spring of 1996, the EPA began to implement that part of the remedy requiring excavation of residential soil at levels above 500 ppm. Granite City renewed its motion for a temporary restraining order. This Court denied Granite City's motion for a temporary restraining order holding that Section 113(h)(4) of CERCLA divested it of jurisdiction to review the EPA's remedy and that Granite City had failed to show any danger of irreparable harm. Thereafter, the EPA proceeded with all aspects of the remedy and in July, 1998, allowed the settling defendants to take over completing the remediation.

On November 9, 1999, plaintiff filed a Notice of Lodging of Proposed Consent Decree (Doc. 251), which was published in the *Federal Register* on December 2, 1999 (64

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Fed. Reg. 67587). After a 30-day public comment period, plaintiff received one comment which was from the settling defendants. On June 13, 2002, plaintiff moved for entry of the Consent Decree. The settling defendants have filed a response joining in the government's motion to enter the proposed Consent Decree (Doc. 286).

III. The Consent Decree.

The proposed Consent Decree contains four major components:

A. Performance of Remedial Action.

The proposed Consent Decree states that the settling defendants will finance and complete the remaining remediation work at the site. Settling defendants are to complete the remediation of: 1) residential areas impacted by stack emissions and waste fill areas; 2) the Taracorp slag pile; and 3) groundwater remediation at the site. The estimated cost to complete the remediation is $19,550,000. Total remediation cost is estimated to be $60,600,000.

B. Payment of Past Response Costs and Future Costs.

The proposed Consent Decree provides that the settling defendants will pay to the EPA Hazardous Substance Superfund $8,970,000 in partial reimbursement of past response costs. The Consent Decree also states that the settling defendants will reimburse the EPA Hazardous Substance Superfund for all future response costs incurred by the EPA in reviewing or developing plans, and otherwise enforcing the Consent Decree.

C. Performance of Supplemental Environmental Project (SEP).

The proposed Consent Decree provides that the settling defendants must complete

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a supplemental environmental project (SEP) which is a lead paint abatement program in Madison County, Illinois. This program is intended to abate hazards from lead-based paint and to secure significant environmental and public health protection for area residents. The Consent Decree states that the program activities must be consistent with the EPA's Interim Revised Supplemental Environmental Projects Policy, 60 Fed. Reg. 24856 (May 10, 1995), and must be completed by contracting with the Madison County Community Development Agency to implement an EPA-approved work plan. The minimum expenditure for the SEP is $2,000,000.

D. Covenant Not to Sue and Contribution Protection.

The proposed Consent Decree states that upon complete and satisfactory performance by each settling defendant of its obligations under the Consent Decree, the plaintiff will provide a covenant not to sue pursuant to CERCLA Sections 106 and 107(a). The covenant not to sue, however, is subject to "reopener" provisions that provide plaintiff with the right to seek an order compelling settling defendants to perform further response actions relating to the site, and to reimburse plaintiff for additional response costs if previously unknown conditions at the site are discovered which indicate that the proposed remedial action is not protective of human health or the environment.

The Consent Decree also protects, under 42 U.S.C. § 9613(f), settling defendants against contribution actions by third parties arising for past and future response costs an work at the site. Lastly, the Consent Decree provides that if the United States enters into settlement with "*de minimis*" parties under section 122(g) of CERCLA, the United States

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will make the proceeds of such settlement available to the settling defendants. So far sixty-five *de minimis* parties have committed to pay $1,142,056.50 in settlement. Under Section XXXIV of the Consent Decree, plaintiff will pay this amount to the settling defendants.

IV. Standard of Review.

This Court must review the proposed Consent Decree to assure that it is fair, reasonable, and consistent with applicable law. *United States v. Union Elec. Co.*, 132 F.3d 422, 430 (8th Cir. 1997); *United States v. Akzo Coating of America, Inc.*, 949 F.2d 1409, 1435 (6th Cir. 1991); *United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990); and *Metropolitan Housing Dev. Corp v. Village of Arlington Heights*, 616 F.2d 1006, 1014-15 (7th Cir. 1980). The purpose of this review is to determine whether the decree adequately protects and is consistent with the public interest. *United States v. Seymour Recycling Corp.*, 554 F.Supp. 1334, 1337 (S.D.Ind. 1982) (*citation omitted*). The Court need not inquire, however, into the precise legal rights of the parties, nor review the merits of the case. *Metropolitan*, 616 F.2d at 1014. It is sufficient if the Court determines whether the Consent Decree is appropriate under the particular facts of the case and that there has been valid consent by concerned parties. *Id. (citations omitted).*

It is the policy of CERCLA to encourage settlements. "That policy has particular force where, as here, a government actor committed to the protection of the public interest has pulled the laboring oar in constructing the proposed settlement."*Cannons*, 899 F.2d at 84 (*citations omitted*). Respect for the agency's role in settlement negotiations is

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heightened when the affected parties, themselves knowledgeable and represented by experienced counsel, have reached an agreement at arm's length and advocate entry of the agreement in a judicial decree. *Id.* The most important factor in evaluating a proposed Consent Decree is whether the decree would be in the public interest. *In re Acushnet River & New Bedford Harbor: Proceedings re Alleged PCB Pollution*, 712 F. Supp. 1019, 1027 (D. Mass. 1989).

The relevant standard "is not whether the settlement is one which the court itself might have fashioned, or considers ideal, but whether the proposed decree is fair, reasonable, and faithful to the objectives of the governing statute." *Cannons*, 899 F.2d at 84 (*citing Durrett v. Housing Auth. of City of Providence*, 896 F.2d 600 (1st Cir. 1990)). While the Court should not "mechanistically rubberstamp the agency's suggestions, neither should it approach the merits of the contemplated settlement *de novo*." *Cannons*, 899 F.2d at 84. Approval of a Consent Decree is committed to the Court's informed discretion. *Id.* However, in making such an assessment, the district court must refrain from second-guessing the Executive Branch. *Id*; *see also United States v. Charles George Trucking, Inc.*, 34 F.3d 1081, 1085 (1st Cir. 1994) ("[A] trial court, without abdicating its responsibility to exercise independent judgment, must defer heavily to the parties' agreement and the EPA's expertise."). A settlement may be deemed unreasonable if it is based on "a clear error of judgment, a serious mathematical error, or other indicia that the parties did not intelligently enter into the compromise." *United States v. Acton Corp.*, 733 F. Supp. 869, 872 (D.N.J. 1990) (*citing United States v. Rohm & Haas, Co.*, 721 F. Supp.

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666, 686 (D.N.J. 1989)).

IV. Evaluation of the Consent Decree.

In the context of a CERCLA settlement, fairness has both procedural and substantive components. *Cannons*, 899 F.2d at 86-7. These two components are discussed below.

A. Procedural Fairness.

When measuring procedural fairness, "a court should ordinarily look to the negotiation process and attempt to gauge its candor, openness, and bargaining balance." *Cannons*, 899 F.2d at 86 (*citations omitted*). Here, no one has challenged the Consent Decree on the ground that it lacks procedural fairness, and the Court finds no evidence that negotiations were conducted at less than arm's length. Indeed, to the contrary, this litigation has been pending since 1991 and the negotiations have been extensive and ongoing. Accordingly, the Court finds that the proposed Consent Decree is procedurally fair.

B. Substantive Fairness.

Substantive fairness means that "a party should bear the cost of the harm of which it is legally responsible." *Cannons*, 899 F.2d at 87 (*citing Developments in the Law –Toxic Waste Litigation*, 99 Harv.L.Rev.1458,1477 (1986)). Substantive fairness dictates that "settlement terms must be based upon, and roughly correlated with, some acceptable measure of comparative fault, apportioning liability among the settling parties according to rational (if imprecise) estimates of how much harm each PRP [potentially responsible

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party] has done." *Cannons*, 899 F.2d at 87 (*citation omitted*).

> [W]hat constitutes the best measure of comparative fault at a particular Superfund site under particular factual circumstances should be left largely to the EPA's expertise. Whatever formula or scheme EPA advances for measuring comparative fault and allocating liability should be upheld so long as the agency supplies a plausible explanation for it, welding some reasonable linkage between the factors it includes in its formula or scheme and the proportionate shares of the settling PRPs [potentially responsible parties].
>
> *Id.* (*citations omitted*).

The Court need not ensure that the settlement is perfectly calibrated in terms of shares of liability so long as it is generally fair and reasonable. *Acushnet River*, 712 F. Supp. at 1032. The agency's chosen measure of comparative fault should be upheld unless it is "arbitrary, capricious, and devoid of a rational basis." *Cannons*, 899 F.2d at 87 (*citing* 42 U.S.C. § 9613(j) (1987) and *Rohm & Haas*, 721 F.Supp. At 681)). Specifically, the Court's task is:

> not to make a finding of fact as to whether the settlement figure is exactly proportionate to the share of liability appropriately attributed to the settling parties; rather, it is to determine whether the settlement represents a reasonable compromise, all the while bearing in mind the law's generally favorable disposition toward the voluntary settlement of litigation and CERCLA's specific preference for such resolutions.

Rohm & Haas, 721 F. Supp. at 680-81 (*citing Acushnet River*, 712 F. Supp. at 1032).

In their public comment, settling defendants have asked the United States to renegotiate the settling defendants' commitment to pay $8,970,000 of the United States' past response costs. Settling defendants advance two supporting arguments. First,

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settling defendants note that after the parties signed the proposed Consent Decree, Congress passed the Superfund Recycling Equities Act, Pub. L. No. 106-113, 113 Stat. 150, (Act), which exempts certain scrap metal and lead acid battery transactions from CERCLA liability. Settling Defendants argue that this Act may affect the proposed Consent Decree by making it more difficult for the United States to complete settlements with *de minimis* parties and to maintain actions against "recalcitrant" parties, thereby reducing the amount of money that settling defendants will receive under Section XXXIV of the proposed Consent Decree. Secondly, settling defendants argue that the costs of completing the remedial work has exceeded original estimates, thus, they should be relieved of their commitment to reimburse past costs.

With regard to the first argument, the Court notes that the Superfund Recycling Equity Act amends CERCLA, in part, by exempting from liability many persons who arrange for the recycling of certain materials, including spent batteries. President Clinton signed the Act into law on November 29, 1999. Contrary to the settling defendants' arguments, however, the Recycling Act does not apply to this case. Section 127(I) of the Act explicitly provides that the new exemption "shall not affect any . . . pending judicial action initiated by the United States prior to enactment . . ." A civil "action" includes "the entirety of a civil proceeding, which necessarily includes any third-party claims." *See e.g., Ginett v. Computer Task Group, Inc.*, 962 F.2d 1085, 1093 (2nd Cir. 1992) and *Nolan v. Boeing Co.*, 919 F.2d 1058, 1066 (5 th Cir. 1990) *cert. denied* 499 U.S. 962, (1991). As such, the Recycling Act does not limit the right of plaintiff to pursue claims

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against *de minimis* parties. *See United States v. The Atlas Lederer Company, et al.*, 97 F.Supp. 2d 830 (S.D. Ohio 2000) (the Superfund Recycling Equity Act does not affect any "pending judicial action initiated by the United States, including cross-claims and third-party claims for contribution under CERCLA). In addition, plaintiff has already collected $1,142,056.50 from numerous *de minimis* parties who have elected to enter into administrative settlements with the EPA, and, as promised by the Consent Decree, these proceeds will be paid to the settling defendants. For these reasons, the passage of the Superfund Equities Recycling Act does not render the proposed Consent Decree unfair.

Settling defendants' second argument is that they should be relieved of their commitment to reimburse past costs because the costs of completing the remedial work has exceeded original estimates. A proposed consent decree, however, is not unfair merely because the estimated cost of the remedy is uncertain or has increased since the proposed decree was lodged with the Court.

> Fairness does not require, when later discovery and developments in the law convince the [government] that the damages are greater and [its] case stronger than there first appeared, that [defendant] should be required to pay more. Quite the contrary -- [defendant] deserved, and the [government] apparently has seen fit to award, a lower settlement amount for its having negotiated in good faith early on.
>
> *Acushnet River*, 712 F. Supp. at 1032; *accord Cannons*, 899 F.2d at 88.

"Compromise of litigation occurs precisely because there is uncertainty about the underlying factual circumstances and the range of possible recoveries." *Rohm & Haas*, 721 F. Supp. at 686. Here, the parties to the proposed Consent Decree negotiated on the

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basis of the best information available at the time. The uncertainty of the final cost of remediation does not render the proposed decree unfair.

Upon review, the Court finds that the proposed Consent Decree is substantively fair. The proposed Consent Decree provides that settling defendants will: 1) complete the remediation selected by the EPA at an estimated cost of $19,550,000 out of a total estimated cost of $60,600,000; 2) pay the Superfund $8,978,000 to reimburse past response costs and as well as pay future oversight costs; 3) pay a Superfund penalty of $400,000; and 4) complete a lead abatement program supplemental environmental project at a minimum cost of $2,000,000. In addition, settling defendants' actual cleanup costs have exceeded the estimated cleanup cost of $19,550,000. Furthermore, the Court notes that the negotiation process has certainly been fair and full of "adversarial vigor." *City of New York v. Exxon Corp.*, 697 F.Supp. 677, 693 (S.D.N.Y.1988). This litigation has been pending since 1991. Plaintiff and the settling defendants have been well-represented, and the case has been fought vigorously on all sides. As such, the results come before the Court with "a much greater assurance of substantive fairness." *See Cannons*, 899 F.2d at 87 n.4. For all of the above reasons, the Court finds that the proposed Consent Decree is substantively fair.

C. **Reasonableness.**

In assessing the reasonableness of a proposed Consent Decree, the Court evaluates three factors: (1) "the decree's likely efficaciousness as a vehicle for cleansing the environment[;]" (2) "whether the settlement satisfactorily compensates the public for the

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actual (and anticipated) costs of remedial and response measures[:]" and (3) "the relative strength of the parties' litigating positions." *Cannons*, 899 F.2d at 89-90. "A settlement may be deemed unreasonable . . . if it is based on a clear error of judgment, a serious mathematical error, or other indicia that the parties did not intelligently enter into the compromise." *Acton Corp.*, 733 F. Supp. at 872 (*citing Rohm & Haas*, 721 F. Supp. at 686).

Here, the Court finds that the Consent Decree satisfies all three factors of reasonableness. As to the first factor, no one has challenged the decree's likely efficaciousness as a vehicle for cleansing the environment, and the Court has no basis upon which to find the proposed remedy unreasonable. *See Akzo Coatings*, 949 F.2d at 1425 ("A reviewing court should not attempt to substitute its judgment for the expertise of EPA officials."). As to the second factor, (i.e., whether the settlement satisfactorily compensates the public for the actual (and anticipated) costs of remedial and response measures), the Consent Decree provides that the remediation will be completed at an estimated cost of $19,550,000 out of a total estimated cost of $60,600,000. The proposed Consent Decree further provides that approximately nine million dollars ($9,000,000) will go into the Superfund for past response costs; that a $400,000 penalty will go into the Superfund, and that at least two million dollars ($2,000,000) will be spent on a supplemental lead abatement program. In addition, the United States will be reimbursed for all future response costs. Finally, the United States has recently reached consent decree with NL Industries that provides for a substantial amount of reimbursement of

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response costs as well as civil penalties. For these reasons, the Court finds that the proposed Consent Decree meets the second reasonableness factor of ensuring that the public will be fully compensated for clean-up costs at the site.

As to the third factor, the Court finds that the settlement is appropriate in light of the relative strength of the parties' respective legal positions. The government's legal position appears strong and solid, and as such, the proposed Consent Decree provides that it will receive a substantial sum of money for past response costs, as well as a sizeable penalty. In addition, the proposed Consent Decree provides for nearly twenty million dollars ($20,000,000) of future remediation costs and two million dollars ($2,000,000) for the supplemental environmental lead abatement program. On the other hand, settling defendants will receive protection against third-party contribution actions and will receive $1,142,056.50 from plaintiff's settlements with de minimis parties. In light of all the circumstances, the Court finds that the settlement, in light of the relative strength of the parties' respective legal positions, is reasonable. *See e.g., Rohm*, 721 F.Supp. at 680 (interpreting reasonableness in light of Congressional goal of expediting effective remedial action and minimizing litigation)); *United States v. McGraw-Edison Co.*, 718 F.Supp. 154, 159 (W.D.N.Y 1989) (settlement reasonable in light of prospect of protracted litigation as contrasted to expeditious reimbursement and remedy); and *Acushnet*, 712 F.Supp. at 1030 (emphasizing that trial would likely be "complex, lengthy, expensive and uncertain"). For all of the above reasons, the Court finds that the proposed Consent Decree is reasonable.

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D. Fidelity to the Objectives of CERCLA.

CERCLA's primary objectives are "accountability, the desirability of an unsullied environment, and promptness of response activities." *Cannons*, 899 F.2d at 91. An evaluation of these factors necessarily overlaps with the Court's assessment of the proposed decree's fairness and reasonableness. *Id.* at 90.

The Court's independent analysis of the proposed Consent Decree reveals that the decree fulfills the purposes of CERCLA. No one disputes that the government made a due and diligent search to identify the potentially responsible parties. There is also no dispute that the proposed Consent Decree provides for a reasonable allocation of responsibility and for the promotion of early cleanup. Finally, no one disputes the technical efficacy of the proposed remedy. For these reasons, the Court finds that the proposed Consent Decree fulfills the primary objectives of CERCLA. *See e.g., Cannons*, 899 F.2d at 91 (finding Consent Decree consistent with CERCLA's purposes after considering: (1) effort to identify all PRPs; (2) reasonable allocation of responsibility; (3) promotion of early clean-up; and (4) technical efficacy of proposed remedy).

V. Conclusion.

For the foregoing reasons, the Court finds that the Consent Decree reached between the United States and Johnson Controls, Inc., Lucent Technologies, Inc., Exide Corporation, AlliedSignal, Inc., GNB Technology, and General Battery Corporation is fair, reasonable, and consistent with the objectives of CERCLA. Accordingly, plaintiff's

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motion for entry of the proposed Consent Decree (Doc. 260) is **GRANTED**.

IT IS SO ORDERED.

DATED: 3/15/03

James L. Graham

DISTRICT JUDGE

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

APR 01 2003

OFFICE OF REGIONAL
COUNSEL